No. 85-1631

FILED
MAY 7 1986
JOSEPH F. SPANIOL, JR
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

NORMA RANDOLPH,

Petitioner,

vs.

SUPREME COURT OF NEW JERSEY and
WILLIAM M. LANZARO, Monmouth County Sheriff,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

W. CARY EDWARDS
Attorney General of New Jersey,
Attorney for Respondent Supreme Court of New Jersey
Richard J. Hughes Justice Complex
CN112
Trenton, New Jeresey 08625
(201) 648-7579

JAMES J. CIANCIA
Assistant Attorney General
Of Counsel

BARBARA A. HANNED
Deputy Attorney General
On the Brief

Adams Press Corp., 1188 Raymond Boulevard, Newark, New Jersey 07102—(201) 623-8611

TABLE OF CONTENTS

PAGE

Table of Authorities ii

Counter-Statement of the Case 1

Summary of Argument 9

Argument:

The Writ should be denied as the decision of the New Jersey Supreme Court is fully consistent with this Court's decisions involving the First Amendment rights of public employees.... 10

Conclusion 19

PAGE

Table of Authorities

Cases Cited

Broadrick v. Oklahoma, 413 U.S. 601 (1973) 14, 18

Connealy v. Walsh, 412 F. Supp. 146 (W.D. Mo. 1976) 16

Connick v. Myers, 461 U.S. 138 (1983) 11, 12

FEC v. National Right to Work Committee, 459 U.S. 197 (1982) 11

Gaulkin, In re, 69 N.J. 185, 351 A.2d 740 (1976)..... 12

Graver Mfg. Co. v. Linde Co., 336 U.S. 271 (1949) 11

Konigsberg v. State Bar of California, 366 U.S. 36 (1961) 11

Morial v. Judiciary Com'n of Stat of La., 565 F. 2d 295 (5th Cir. 1977) 15

Norma Randolph, IMO, 101 N.J. 425 (1986)..... 12, 13,16

Pickering v. Board of Educ., 391 U.S. 563 (1968) 8-10, 12, 13

Prohibition of Political Activites by Court-Appointed Employees, In re, 473 Pa. 554, 375 A.2d 1257 (1977) 16

Rowland v. Mad River Local School Dist., U.S. , 105 S. Ct. 1373 (1985) 12

Smith v. Ehrlich, 430 F. Supp. 818 (D. D.C. 1976)14, 15

United Public Workers v. Mitchell, 330 U.S. 75 (1947) 14-17

United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973)11, 14, 16, 18

PAGE

United States Constitution Cited

First Admendment 9, 10, 15

Statute Cited

5 U.S.C. §7324 et seq. (HATCH ACT) 14

Cannon Cited

Code of Conduct for United States Clerks:

Cannons 5B and 7B 17

Rule Cited

R. 1:17-1 ..... 2, 7, 8, 18, 19

No. 85-1631

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

NORMA RANDOLPH,

Petitioner,

vs.

SUPREME COURT OF NEW JERSEY and
WILLIAM M. LANZARO, Monmouth County Sheriff,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Counter-Statement of the Case

In recognition of "New Jersey's unique commitment to an independent judiciary" and to avoid "the appearance of a judiciary lacking in impartiality," the Supreme Court of New Jersey adopted a court rule in 1961 which banned

partisan political activity by court employees and required the employees to request the Court's prior approval before holding any other public office (Pa16, Pa37 to Pa38, Pa32).* Following a series of decisions by the Court interpreting the rule's restrictions as applicable to non-partisan political activity, the rule was amended in 1969 to substantially its present form (Pa32 to Pa33). Since 1969, R. 1:17-1 of the Rules Governing the Courts of the State of New Jersey has "specifically prohibited any form of political activity by court officials" (Pa34).

Petitioner Norma Randolph was hired as a court attendant by respondent William M. Lanzaro, Sheriff of Monmouth County, on January 13, 1983 (Pa3 to Pa4). A court attendant "is a uniformed employee who attends the judges of one or more of the courts located in the . . . county court house" and whose "duties include the supervision of the activities of parties, jurors, and witnesses in the courtroom; the work of court crier; swearing in witnesses; sequestering jurors; and in general the performance of nonsecurity tasks related to the conduct of courtroom business" (Pa4). As an employee of the judicial branch of government subject to the provisions of R. 1:17-1, Mrs. Randolph submitted a list of her outside activities to the Monmouth County trial administrator for review (Pa4). Following that review, the Administrative Office of the Courts advised petitioner that, pursuant to R. 1:17-1, she could not continue to serve as an appointed member of four public boards and committees while employed by the judiciary "primarily because they are committees of other branches of government, and also they involve a significant likelihood of involvement in political activity" (Pa4 to Pa5). Mrs. Randolph was also advised that she could not

---

* Pa refers to petitioner's appendix.

continue as an officer of two private associations while employed by the judiciary since "these activities also hold a substantial potential for political activity" (Pa5).

Following receipt of the advice from the Administrative Office of the Courts, the Assignment Judge of Monmouth County entered an order for compliance on May 6, 1983 which required the Sheriff of Monmouth County to reassign Mrs. Randolph from courtroom duties should she continue to be engaged in the outside activities (Pa4 to Pa5). Respondent Sheriff of Monmouth County thereafter filed a notice of petition for review with the Supreme Court of New Jersey on May 30, 1983 (Pa5). The Court granted the petition on June 16, 1983 and ordered that a factual hearing be held concerning the activities of Mrs. Randolph (Pa6). The hearing was held on October 21, 1983 before a judge of the Superior Court of Monmouth County who subsequently submitted recommended findings of fact (Pa6). Petitioner did not take exception to any of the recommended findings (Pa6). Following submission of briefs on behalf of petitioner, respondent Lanzaro, the Judiciary and *amicus curiae* NAACP, oral argument was held before the Court on September 10, 1984 (Pa1).

On January 7, 1986, the Supreme Court of New Jersey rendered its decision affirming the Compliance Order of the Law Division, thereby denying the request of Mrs. Randolph to continue her outside activities while serving as a court attendent (Pa1, Pa72). In rendering its decision, the Court carefully examined the nature of the organizations involved as set forth in the recommended findings of the lower court (Pa50).

According to those findings, the public organizations to which Mrs. Randolph has been appointed by either municipal or county elected officials are the Monmouth

County Mental Health Board, the Freehold Borough Board of Assessment, the Freehold Borough Youth Guidance Council and the Freehold Borough Citizens Participation Group HUD (Pa38). "Each [organization] plays a role designated by statute, regulation, or ordinance in government and public affairs" (Pa38 to Pa39). For example, the Monmouth County Mental Health Board is an agency of county government with the responsibility for, *inter alia*, developing a comprehensive plan of community mental health services and recommending the amount of state financial aid to be allocated to each such project in the county (Pa39). Additionally, the Board takes positions on "legislation that involves the funding for mental health projects" (Pa39). The function of the Freehold Borough Board of Assessment "is to make assessments of benefits accruing from local improvements in the Borough" (Pa40). Its statutory responsibility is "to examine real estate in the vicinity of a local improvement to determine what lands have been benefited and also to fix and determine the amount of damages accruing to any property by reason of construction of municipal facilities" (Pa40).

Since federal regulations governing community development block grants mandate citizen participation, the Citizens Participation Group of the Freehold Borough HUD was established pursuant to these regulations with the responsibility "to hold public hearings and determine the establishment of priorities for the expenditure of funds allocated to the communities in connection with the community block grant program" (Pa40 to Pa41). The fourth public appointive position held by Mrs. Randolph is with the Freehold Borough Youth Guidance Council, which is a statutorily created public body serving "as an alternative to judicial enforcement in juvenile complaints" (Pa41,

Pa43). Police officers, instead of signing juvenile complaints, may refer them to the Youth Guidance Council which is authorized to make recommendations for corrective action (Pa 41 to Pa42).

None of the organizations described above endorses political candidates or are involved in partisan politics (Pa42). However, based on their nature and duties, the majority decision of the New Jersey Supreme Court concluded that

> the first three of [the organizations] are deeply involved in the political activity of the community. The determination of which section of the community shall receive community development block grant programs can be a highly charged political decision. Such a decision has a realistic likelihood of involvement in litigation if dissatisfied citizens protest the action of the governing body in adopting its plan for participation in the community development block-grant program. Few subjects are more controversial than a public improvement. The citizen whose lands have been the subject of a road improvement or a sewer assessment finds himself or herself deeply embroiled in a community dispute about the wisdom or necessity of the improvement. An equally realistic likelihood for public controversy arises with respect to the determination of funds and sites for community mental health programs [Pa42 to Pa43].

As to the Youth Guidance Council, the majority decision concluded that those "who have been subjected to its process and who later appear in Court might understandably feel that their position was somewhat compromised

by their prior involvement with the court employee in the employee's municipal capacity" (Pa43). Neither the concurring nor the dissenting opinions disagreed with the factual conclusions concerning the nature of the activities engaged in by these public bodies (See Pa82; Pa116).

In addition to these four public organizations, Mrs. Randolph is a member and serves on the Executive Committee of the Greater Red Bank Chapter of the National Association for the Advancement of Colored People (Pa47, Pa82). Findings concerning the activities of the Greater Red Bank NAACP demonstrate that while the organization does not support or oppose specific canadates, the local branch does host an annual "Candidate Night" and is actively involved in voter registration efforts and in transporting voters to the polls (A55). Moreover, the record reflects that the local chapter had recently "been actively involved in public positions with respect to the discriminatory effect of various public issues" (A56). Additionally, the majority opinion took judicial notice of the purposes and goals of the NAACP, "knowledge of [which] . . . is part of our national culture" (A52). Based on this knowledge and an examination of the local chapter's constitution and by-laws, the majority found that the members of the NAACP "seek, through cooperative organizational activity, to achieve the legitimate political goal of eliminating all racial barriers that deprive black citizens of the privileges and burdens of equal citizenship rights in the United States" (P52 to Pa54). In accomplishing this goal "the organization would be unfaithful to its purposes if it did not seek to hurl itself into the center of the deeply divisive political controversies that surround the elimination of every trace of prejudice and bias in our society" (Pa53 to Pa54). Moreover, such controversies

often lead to litigation in the state court system (Pa56). Again, neither the concurring nor dissenting Justices disagreed with the majority's factual conclusions concerning the nature of the activities of the NAACP (See Pa82 to Pa83; Pa116).

Mrs. Randolph is also active in the United Progressive Homeowners and Taxpayers Association which was formed "as a direct outgrowth of the Citizens Participation Group of the Freehold Borough for HUD," one of the four public bodies to which Mrs. Randolph was appointed (Pa50). While this private organization is not affiliated with a political party and does not endorse political canidates, "it was involved directly in soliciting funds from the community to develop a county-owned building . . . as a community resourse facility" (Pa51). Mrs. Randolph negotiated directly with county officials in this regard, she is the agent for service of process on the association and she serves as its second vice-president and spokesperson (Pa51, Pa83).

Following this careful analysis of the nature of each of the six organizations involved, the Court concluded that approving Mrs. Randolph's request to continue serving on the four public bodies and in a public leadership role in the two private organizations would threaten the goal that Rule 1:17-1 seeks to accomplish. As the majority decision states:

> What litigants experience is the public face of justice. It is a face that includes much more than the judges; it includes everyone who works in that courtroom and everything that worker portrays to the public. The face that the public sees should have the appearance of total honesty and total imparti-

> ality. That imparitiality will be lost when the visible face of the judicial system, presented through its employees in a courtroom, portrays a commitment not only to one of the parties or issues involved in litigation before the court but to any partisan cause. To preserve that independence and impartiality for all, our employees must forego roles in the public political arena [Pa60].

The Court was careful to stress that the restrictions applied only to Mrs. Randolph's "public political activities" and not her membership in either the NAACP or the United Progressive Homeowner and Taxpayers Association (Pa 70).

In rendering its decision the Court addressed petitioner's challenge to Rule 1:17-1 and its application to her as impermissably restricting her First Amendment rights of freedom of expression and association and as being vague and overbroad (Pa1 to Pa15; Pa58 to Pa72). The decision emphasizes that "[p]ublic employees do not shed their constitutional rights when they undertake" public employment and thus "careful attention must be paid to Norma Randolph's petition to engage in the activities while she serves as a judicial employee" (Pa7 to Pa8). Applying the holding of the United States Supreme Court in *Pickering* v. *Board of Educ.*, 391 U.S. 563 (1968) "that government as an employer has interests 'in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general,'" the New Jersey Supreme Court concluded that a balancing process must be employed to reconcile the competing interests (Pa8 to Pa15) (quoting *Pickering* v. *Board of Educ., supra,* 391

U.S. to 568). The process requires the Court to "balance the substantial interest of the judiciary, the forms of expression involved, and the availability of other means to achieve the goals of the judiciary" (Pa15). When the particular activities at issue "pose a realistic likelihood of involving the employee in important and recurring public issues that are a frequent subject of political controversy, that create the appearance of judicial involvement in those issues, and that generally give the appearance of a judiciary lacking in impartiality on the issues involved" the interest of the Court in preserving "judicial integrity and the public appearance thereof" must prevail over an individual employee's rights (Pa37 to Pa38, Pa72).

Summary of Argument

The writ sought herein should be denied because petitioner has failed to demonstrate that the decision of the New Jersey Supreme Court conflicts with any principles enunciated by this Court in the area of the First Amendment rights of public employees. The New Jersey Supreme Court properly interpreted and applied the balancing process established in *Pickering* v. *Board of Educ.*, 391 U.S. 563 (1968) in deciding that petitioner's political activities may constitutionally be restricted while she is employed in the state judicial system. Contrary to petitioner's contentions, this Court's prior decisions permit restrictions on other than partisan political activity and such further restrictions as imposed by the New Jersey Supreme Court are reasonably necessary to achieve its goal of an independent and impartial court system. Moreover, pursuant to this Court's precedents, less restrictive means would not accomplish the goal of completely divorc-

ing the courts of New Jersey from political and outside pressures, both real and perceived. Since the decision below is consistent with rulings of this Court, no basis exists for granting review of the writ of certiorari.

ARGUMENT

The Writ should be denied as the decision of the New Jersey Supreme Court is fully consistent with this Court's decisions involving the First Amendment rights of public employees.

Both the majority and dissenting opinions of the New Jersey Supreme Court agree on the legal prinicples that govern the issues in this case. As Justice Pollock stated in his concurring and dissenting opinion "[t]he majority and dissenting opinions agree that our endeavor is to strike a balance between two crucial, but contending, values: a public employee's constitutional rights of free speech and association, and this Court's power to regulate the speech and conduct of employees associated with the judiciary" (Pa78 to Pa79). Neither is there disagreement in the opinions below concerning the factors that should be addressed in the balancing process pursuant to this Court's decision in *Pickering* v. *Board of Educ., supra* (compare Pa37 with Pa102). Rather, the difference in outcome between the majority and dissenting opinions is predicated on the dissent's factual conclusion that a court aide's role is not sufficiently "sensitive to the decision-making process" of the judiciary to warrant restrictions since the public would not "perceiv[e] that court aides who are assigned randomly to perform administrative tasks influence the legal decisions of the judges. . . ." (Pa105 to

Pa106, Pa110, Pa111). In contrast, the majority and concurring Justices concluded that the position which Mrs. Randolph holds in the judicial system "presents a close association with the judicial process. . . . [and] that her identification with the judge is sufficient to meet the criteria outlined for creating the appearance of judicial involvement in controversial political issues" (Pa64, see Pa81).

As discussed *infra* both the majority and dissenting opinions correctly interpreted the precedents of this Court concerning restrictions on the First Amendment rights of public employees. Thus, the only issue in dispute is whether the public so closely identifies a court attendant in the New Jersey judiciary system with the judge he or she serves such that restrictions on the political activities of court attendants are necessary in order to preserve the complete impartiality of the New Jersey court system. This factual issue alone, however, does not justify plenary review by this Court "in the absence of a very obvious and exceptional showing of error." *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949).

As recognized by the Supreme Court of New Jersey, there is no doubt that "[p]ublic employees do not shed their constitional rights when they undertake such service" (Pa7); see *Connick* v. *Myers*, 461 U.S. 138, 142 (1983). However, as this Court has consistently held "[n]either the right to associate nor the right to participate in political activities is absolute." *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 567 (1973); see also *FEC* v. *National Right to Work Committee*, 459 U.S. 197 (1982); *Konigsberg* v. *State Bar of California*, 366 U.S. 36 (1961). It has long been established that the government has an interest in regulating the conduct and "the speech of its employees

that differ[s] significantly from those it possesses in connection with regulation of the citizenry in general." *Pickering* v. *Board of Education, supra,* 391 U.S. at 568.

In *Pickering,* this Court invoked a balancing test to judge the validity of restrictions on the First Amendment rights of public employees. Pursuant to that test the First Amendment rights asserted by the employee must be weighed against the disruptive effect of the activities on the government's ability to provide services. 391 U.S. at 568. The rationale of *Pickering* and *Connick* is to seek a balance "between the interest of public employees in speaking freely and that of public employers in operating their workplaces without disruption." *Rowland* v. *Mad River Local School Dist.,* U.S. , 105 S. Ct. 1373, 1376 (1985) (Brennan, J., dissenting from denial of *certiorari* in Mem. No. 84-532). The decision of the Supreme Court of New Jersey in *IMO Norma Randolph,* 101 N.J. 425 (1986), reflects a careful and painstaking application of the balancing process established by this Court.

The interest of the state judiciary against which Mrs. Randolph's interests must be balanced reflects "New Jersey's unique commitment to an independent judiciary" (Pa16). It is a commitment "so austere" (Pa72) that not only judges but "others officially associated with that court system have been wholly divorced from involvement in partisan or other political activity, as a necessary sacrifice for the sake of judicial integrity and the public appearance thereof." *In re Gaulkin,* 69 N.J. 185, 189, 351 A.2d 740 (1976). "This separation is thought in this State . . . to be indispensable to public confidence in the courts and their probity, impartiality, disinterested objectivity and freedom from outside pressures in their dealing with causes coming before them." *Ibid.*

The Court in *Randolph* identified several factors to be carefully examined in determining whether the rights of judicial employees "can be reconciled with the public's need for confidence that the judiciary will be unquestionably impartial in resolving the disputes that necessarily arise in community life" (Pa8, Pa36 to Pa37). The factors to be "weigh[ed] in the balance" are "the substantial interest of the judiciary, the forms of expression involved, and the availability of other means to achieve the goals of the judiciary" (Pa15). The Court further reasoned that the balance of competing interests "is related to the closeness of the employee to the judicial decision-maker and the realistic likelihood that the activities will become the focus of public controversy" (Pa36 to Pa37). This formulation of the balancing process to be invoked is entirely consistent with this Court's decisions. In *Pickering* v. *Board of Educ., supra,* this Court expressly declined to state a "general standard" by which all conflicts could be judged "[b]ecause of the enormous variety of fact situations" which may arise and further noted "that significantly different considerations would be involved" in different factual patterns. 391 U.S. at 569, 570 n.3. The balancing process invoked by the New Jersey Supreme Court in this case takes into account all the considerations which should be examined. Indeed, petitioner does not really challenge the standards developed by the Court. Rather, she challenges the Court's definition of "political activity" and contends that this Court's precedents permit restrictions only on the partisan political activity of public employees. Petitioner's argument, however, misinterprets this Court's prior decisions.

In a series of three cases this Court has addressed First Amendment challenges to the validity of portions of the

"Hatch Act," 5 U.S.C. §7324 *et seq.*, which restricts federal employees' political activities, and to an Oklahoma statute which imposes similar restrictions on state employees. *Broadrick* v. *Oklahoma,* 413 U.S. 601 (1973) [*Broadrick*]; *United States Civil Service Commission* v. *National Association of Letter Carriers* [*Letter Carriers*], 413 U.S. 548 (1973); *United Public Worker* v. *Mitchell,* [*Mitchell*], 330 U.S. 75 (1947). In all three cases the validity of the statutes was upheld. While it is true that this Court focused on the limitations to partisan political activity in the applicable statutes in rejecting the challenges, the cases do not hold that only restrictions on partisan activity are permissable. *Smith* v. *Ehrlich,* 430 F. Supp. 818, 820 (D. D.C. 1976). Rather, the holding in these cases that restrictions on partisan political activity comport with the First Amendment is explained by the fact that in all three cases the government had decided that restricting only those activities was sufficient to achieve its purposes of assuring that its laws would be administered "without bias or favortism for or against any political party or group," to prevent the expanding federal work force from becoming a "powerful, invincible, and perhaps corrupt political machine," *Letter Carriers, supra,* 413 U.S. at 565-566, and to "attrac[t] members of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion,' " *Broadrick, supra,* 413 U.S. at 606.

In light of the admittedly legitimate governmental interests sought to be protected by the Hatch Act and the Oklahoma statute, the focus in these cases was on whether the restriction furthered those interests. As the challenged statutes went no further, it was not necessary for this Court to determine whether any broader restrictions on

political activity would be justified under the First Amendment, given different governmental interests to be achieved. In fact, in *Mitchell* this Court expressly left open the question of how far Congress could go in regulating the political activities of federal employees when it noted that

> We do not know . . . whether the need for regulation of their political activities will increase or diminsh. The use of the constitutional power of regulation is for Congress, not for the courts.
>
> We have said that Congress may regulate the political conduct of Government employees 'within reasonable limits' even though the regulation trenches to some extent upon unfettered political action. The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress [330 U.S. at 102].

Thus the standard established by *Mitchell* for determining the validity of prohibitions on public employees engaging in political activity is whether "the act regulated . . . [is] an act reasonably deemed by Congress to interfere with the efficiency of the public service." *Mitchell, supra,* 330 U.S. at 101. The correct inquiry in each case is not whether the prohibited activity is partisan or non partisan, election related or not, but whether there is "a reasonable necessity" for imposing the particular restriction in order to achieve a sufficiently important public objective. *Morial* v. *Judiciary Com'n of State of La.,* 565 F. 2d 295, 302 (5th Cir. 1977); *Smith* v. *Ehrlich, supra,* 430 F. Supp. at 821. As the decision of the New Jersey Supreme Court makes clear, restrictions on the type of

activities engaged in by petitioner are "reasonably necessary" to achieve the goal of a court system completely divorced from politics and outside pressures, both real and perceived, especially in light of the public tendency to attribute activities of court employees to judges. *Connealy* v. *Walsh*, 412 F. Supp. 146, 156 (W.D. Mo. 1976); *In re Prohibition of Political Activities by Court-Appointed Employees*, 473 Pa. 554, 375 A.2d 1257 (1977). As stated in *Letter Carriers*

> it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent [413 U.S. at 565].

Petitioner further challenges the decision of the New Jersey Supreme Court by arguing that there is no objective evidence that restrictions on her particular activities will promote the goal of an independent and impartial judiciary in the State of New Jersey. However, the decisions of this Court concerning the validity of restrictions on public employees' political activities have not required such objective proof. See *Mitchell, supra,* 330 U.S. at 97-98; *Letter Carriers, supra,* 413 U.S. at 556-557. Moreover, as the majority decision in *IMO Randolph* states

> This case cannot be decided as if petitioner were the only court aide in the system. We must ask ourselves how independent the stance of the judiciary remains when not one but many, or indeed all of the aides in a courthouse participate in political affairs or other activities that spill over into the political arena [Pa59 to Pa60].

Similarly, in *Mitchell* this Court upheld the "fear" of Congress concerning "the cumulative effect" of all employees "who could be induced to participate actively" as a constitutional basis for restrictive legislation. 330 *U.S.* at 101.

Petitioner also contends that the Supreme Court of New Jersey impermissably rejected "less restrictive means to the end of judicial independence" (Petition at page 15). It is suggested that the arguably less restrictive prohibitions contained in Cannons 5B and 7B of the Code of Conduct for United States Clerks would adequately achieve the goals of an independent and impartial New Jersey judicial system. Petitioner rejects without "comment" the reasoning of the New Jersey Court in concluding that adopting such lesser restrictions would not adequately achieve its goal (Petition at page 17). Rather than being "contrary to reality," that reasoning is entirely persuasive. The Justices of the Supreme Court of New Jersey are certainly knowledgeable of the differences between the state and federal court system. As noted in the decision, "the rules that we fashion [for the state system] must be relevant to a system formed upon the county court house and municipal court. In such a system, court personnel are the community members" (Pa61). The validity of this reasoning is demonstrated by the precise facts of the instant matter. Petitioner, who was employed in the Monmouth Couty Court House, located in Freehold, was appointed to public positions in Monmouth County and Freehold and active in private organizations concerned directly with issues arising in that county. In contrast, the federal district courts encompass many counties and controversies which are brought before them often arise in counties outside the location of the court itself (Pa60 to Pa61). In light of the differences between the two court systems, the New

Jersey Supreme Court correctly rejected the contention that less restrictive means are available to accomplish its goal.

Finally, in a footnote petitioner suggests that Rule 1:17-1 is unconstitutionally vague. To the extent that this contention has been adequately raised in the petition, it is clearly without merit. In rejecting a similar contention in *Letter Carriers,* this Court found it "important" that the public employees had access to a procedure whereby they could "obtain advice from the [Civil Service]Commission and thereby remove any doubt that there may be as to the meaning of the law." 413 *U.S.* at 580. Similarly, as this case and others cited in the Court's decision demonstrates, New Jersey court employees have access to a procedure whereby they may seek approval of the New Jersey Supreme Court to participate in activities which may or may not be deemed "political" (Pa32 to Pa37).

As stated by this Court in upholding restrictions on partisan political activity of federal employees, the restrictions of Rule 1:17-1

> are not aimed at particular parties, groups or points of view . . . They discriminate against no racial, ethnic or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls [*Letter Carriers, supra,* 413 *U.S.* at 564].

Rather, the rule "seeks to regulate political activity in an even-handed and neutral manner." *Broadrick, supra,* 413 U.S. at 616. The long recognized importance in New Jersey of a complete separation of its court system from political concerns and the reasonable necessity of prohibiting court employees from engaging in activities which may call into question the independence and impartiality

of the judiciary more than justify the "even-handed" infringement on the activities of court employees contained in Rule 1:17-1. In deciding that petitioner's activities may constitutionally be restricted after a balancing of the competing interests involved, the New Jersey Supreme Court has adhered to the principles enunciated by this Court. Since the legal conclusions of the decision below are wholly consistent with opinions of this Court, no basis exists for plenary review of this matter.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the petition for *certiorari* should be denied.

Respectfully submitted,

W. Cary Edwards
Attorney General of New Jersey,
Attorney for Respondent Supreme Court of New Jersey

By: Barbara A. Harned
Deputy Attorney General

Dated: May 6, 1986